IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/07/2002

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.25045 OF 2002
AND
W.P.M.P.NO.34396 OF 2002.

S.Sathyavathi ... Petitioner

-Vs-

The Tamil Nadu Housing Board
rep.by its Executive Engineer,
Housing Board Shopping Complex,
Mettur Road,
Surampatty Naal Road Junction,
Erode-638 001. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.T.Murugamanickam

For respondent : Mr.D.Veerasekaran

:O R D E R

The above writ petition has been filed praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in Letter No.R5/9510/90, dated 18.8.2000 and quash the same and consequently direct the respondent to execute the sale deed in favour of the petitioner in respect of M.I.G. Plot No.1058, Nasiyanur Road Scheme, Erode.

2. The case of the petitioner is that he was an allottee of the M. I.G. Plot No.1058 in the Nasiyanur Road Scheme of the respondent as per the order of the respondent dated 6.5.1991 and as per the hirepurchase agreement, the total cost was Rs.1,27,000/=; that out of the said amount, he already paid a sum of Rs.69,300/= towards advance and the rest of the amount of Rs.56,700/= was to be paid in equal monthly instalments at Rs.813/= for a period of ten years and since the petitioner paid all the amounts by September, 1997, the respondent is bound to execute the sale deed in respect of the petitioner's plot; that on 18.8.2000, the respondent sent a letter along with a working sheet thereby claiming a total sum of Rs.61,350/= as the

balance amount to be paid by the petitioner, wherein a sum of Rs.15,860/= was included towards the carrying cost payable at the rate of 12% p.a. from 1990 till the allotment in May, 1991 and in spite of several representations sent on 25.8.2000, 23.9.2000, 5.10.2000, 27.6.2001 and 26.12.2001 seeking a clarification regarding the figures arrived at in the working sheet, the respondents have not sent any reply and hence the writ petition.

3. During arguments, the learned counsel for the petitioner would submit that as per the working sheet annexed to the impugned order, the cost of the plot was determined at Rs.1,05,700/= instead of Rs.1,26 ,000/= fixed in the year 1991 and that being so, if the advance amount of Rs.69,300/= is deducted, the remainder payable to the respondent Housing Board would be only Rs.36,400/= which would have to be paid in equal monthly instalments at Rs.813/= instead of Rs.56,700/= being paid in equated monthly instalments as earlier determined and therefore the instalments so far paid by the petitioner

on the remainder of Rs.56,700/= would far exceed the actual remainder of Rs.36,400/= and therefore the respondent Housing Board is bound to execute the sale deed in favour of the petitioner.

4. The learned counsel for the petitioner would also submit that the respondent does not state as to under what head the `carrying cost' of Rs.15,860/= is arrived at for a period covering March, 1990 to May, 1991, whereas the petitioner was allotted the plot only in May, 19 91 and possession was handed over only in November, 1991. On such arguments, the learned counsel for the petitioner would pray to allow the writ petition as prayed for.

5. On the contrary, the learned counsel appearing on behalf of the respondent Board would submit that the cost mentioned in the allotment order as well as lease agreemetn is only provisional and subject to final determination and taking into considering the escalation of cost of materials, the Board has got right to enhance the price of the building. In support of his contention, the learned counsel for the respondent would cite two judgments, the first one delivered by the Apex Court in SHIMLA DEVELOPMENT AUTHORITY vs. ASMA RANI reported in A.I.R. 1996 SC 1591 wherein , it has been held that `the allottees bound to bear not only escalation in construction cost but also of escalation value of land when Court enhances compensation for land acquired under Land Acquisition Act at various stages'

6. The second judgment cited by the learned cousnel for the respondent is one delivered by me, following the above said Supreme Court judgment and a Division Bench Judgment of this Court reported in 1997 WLR 25, in SHENBAGAM GARDEN HIG HOUSE ALLOTTEES ASSOCIATION, REP.BY ITS SECRETARY vs. STATE OF TAMIL NADU REP.BY COMMISSIONER AND SECRETARY TO GOVERNMENT, HOUSING
AND URBAN DEVELOPMENT DEPARTMENT, FORT ST. GEORGE, MADRAS AND TWO OTHERS reported in 2000 (III) CTC 146 wherein it has been held that `the Housing Board is quite competent to enhance the cost of the property since the assumption of the value in the lease-cum-sale agreement is only a tentative one and subject to final determination at the time of allotment of the

building'. Citing the above judgments, the learned counsel for the respondents would pray to dismiss the above writ petition.

7. Assessing the case in the light of the judgments cited, it is clear that the Housing Board is quite competent to enhance the cost of the property since the assumption of the value in the lease-cum-sale agreement is only a tentative one and subject to final determination at the time of allotment of the building. Th erefore, it has to be decided that with the enhancement of the cost of the building materials it has become necessary on the part of the Housing Board to enhance the cost of the building, which is perfectly valid and binding on the petitioner.

For all the discussions held above, the above writ petition is without merit and the same is dismissed accordingly.

However, in the circumstances of the case, there shall be no order as to costs.

Consequently, W.P.M.P.NO.34396 OF 2002 is also dismissed.

Index: Yes
Internet: Yes

Rao

To

The Executive Engineer,
The Tamil Nadu Housing Board
Housing Board Shopping Complex,

Mettur Road,
Surampatty Naal Road Junction,
Erode-638 001

Order in WP.25045 of 2002 and
WPMP.No.34396 of 2002.